THE VISCOUNT OF TARBAT

Being Cited INCIDENTER in the Action betwixt *Alexander Monro*, and the Clerks of the SESSION;

oes humbly Offer what followes to be Conſidered by the Right Honourable COMMISSION of PARLIAMENT.

BY The expreſs ſtanding Statutes, the Clerk Regiſter's Deputes for *Parliament* and *Seſſion*, are reſtricted to the number of Three. The Law prohibites the Clerk Regiſter to commiſſionat any ore; or to adjoine any to theſe Three, without expreſs conſent of e other Principal to whom any ſhall be adjoined.

Some three or four times, one deſires of the Principals; one has en adjoined to the Deſirer before the year 1640, and this was con- nant to Law. But Sir *Archibald Primroſe* caſts in a Clauſe in his Com- iſſion allowing him to joine one or more in theſe Offices, as ſhould found conducing to the good of the Leidges; and on this warrand ins one to every one of the Three Offices, ratifies their Gifts in rliament, and they ſerve in Seſſion; but without asking or getting y expreſs conſent of the other Three, as the Law does *ſpecifickly* quire; and amongſt others, Mr *Monro* is adjoined to Mr *John Hay atis.*

Anno 1764, The KING being informed, that this was againſt w, and (as ſome ſaid) inconvenient, He by a Royal Letter to the ſion, as a juſt Executor of the Law, requires the Lords to reduce ſe Offices to their lawful Conſtitution and Number; But accord- to His *Clement Nature*, did alſo preſcribe; that theſe who in conſo- nancy

nancy to Law were to be removed, ſhould have a Gratification giv
by the other who was to remain in each Office, at ſuch a rate, as
ſupreme Judicature of the Nation ſhould judge fit: The Seſſion g
ing dutiful Obedience to the Royal Will, in reducing this matte
the Rule of the Law; They modifie no leſs, then the full of what
by cuſtom payed for ſuch an Adjuncts Office at, or before that ti
viz. 7000 *Merks* to each.

There is no doubt theſe who were judged fitteſt to be remov
would rather have kept their illegal poſſeſſion, then take this ſu
But they could not but think their removal was ordered with *Cle*
cie, when as by Law, they might have been ſet off from their ille
Poſſeſſion without the reimburſment of their inconſiderable Adva
yet to be re-imburſed of it, and enjoy their gain whilſt they poſ
tho to the *Læſion* of the other Clerks, on whom they were intrud
and accordingly they went off in acquieſcence.

But if two who bought their Office did ſo, how well ſatisfied ſho
Mr: Monro have been, who not only entered illegally, and more i
gally than the other two; but alſo *gratis*? And albeit he would
ther have kept the Office, yet he ſhewed full acquieſcence; 1.
uſing no Proteſtation nor interpellation to the ſentence; 2. By hon
gating it, in receiving the Price. 3. By a *Legal Diſpoſition of all ſuch Right*
Title as he had, to another. And 4 by acquieſcing for 14 years in this tr
action. And 5 by a voluntar exercing another Office in that v
Court, inconſiſtent with his being a Clerk. *viz.* Of an Advocate wi
out Proteſtation or Inſinuation, that he had ſo much as any prete
or an eye to the Clerkſhip. One who were not verſed in the No
of Mr *Monro's* Replyes, and knew nothing but Law and Reaſon, wo
think that if there was Injury done to any in all this Affair, it was
Mr *John Hay*, on whoſe Office Mr *Monro* was obtruded; And when
KING reſtored him to his Right, that yet he behoved to pay
this Juſtice, and to one who had no legal Tittle to it, and who gave
thing for it, had Mr *Monro* ſo much of pretence, it had ſav'd his *Lawyers*

ences of a great deal of miſtake, both in *citation and application of Laws*
However Mr *Hay* goes from the Office, Sir *Thomas Murray* being
rk Regiſter, what ſhould now be done? A Clerk is neceſſar for
Kingdom, and exerciſe of Juſtice; Mr *Monro* puts in no claime
his notable Tittle, and I dare ſay, Sir *Thomas Murray* did not gueſs
he could not place one in that Office, without hazard of being a
uſſor, a *Robber*, or ſome other of the Replyer's *Epithets*. In the name
port, the Clerks place muſt vaik till Mr *Monro* think fit to deſire
or until he ſit down in his Chair: Sir *Thomas* did not know this
ligation, he Commiſſionates another whom he and the Seſſion
ged fit, and receives a good deed for it. *viz.* 100 Pieces more then Mr
Hay did give for the half of it to Mr *Monro*. He ſerves the Leid-
but what's payed him for his Service? He muſt by this New Na-
d Logick, pay it in to Mr *Monro* who Served none, Interpelled
e, and Exerced two other lucrative Imployments at the time, in-
iſtent with this Service of a Clerk: And not only ſo, but to the
ood, he muſt remove and yield his Place to Mr *Monro*, I hope
er the pain of Quadruple: For ſo the Edict preſcribes againſt the
illing Reſtorer; and no doubt, the now Clerks are not frank to
ore haſtily.

Vell, *Tarbat* as the Replyer doth ſhortly call him, comes thereaf-
o be Clerk Regiſter, and in his time Actions were multiplyed,
it was judged by many not unfit that there ſhould be two in
y Office. *Tarbat* adviſes it, and finds the Judges of this Opinion,
Repreſents it to the King, who gives his Conſent, but ſo as by a
er, to lay it before the *ſupreme Judicature*, who found that be-
e of the ſtanding Law this could not be done without the conſent
he Three who were in Office, and they conſenting, Three were
yned.

arbat did not by Vertue of a Clauſe contrair to a ſtanding Act of
iament, take a Liberty to add one or more in theſe Of-
; But *Tarbat* according to the Law, did add one to each, with
the

the consent of him, to whom he was added; And wh
as the Clause creept in to the Clerk Registers Commis
was no narrower than to allow him to add one or more, *Tarbat*
take care in the Act of Parliament 1685, That *the power of Ad*
tho with consent, should not exceed one of Addition; And all this w
Tarbat can Declare, he never heard or thought of Mr. *Monro* as
tending to be a Principal or Adjunct.

Now, How comes *Tarbat* to be called or concerned in this Pro
if it be for Restitution of what was payed to him, in case of Ev
on; he protests to be heard against that in time convenient, sinc
hitherto uncontraverted grounds of Law, he will make it evid
that *non tenetur de evictione*, of what he got, *quatenus in officio*; and
against the Repetition when urged.

But he presumes it Legally impossible, That Deputes can b
the least hazard from so wild a Claim, not only not founded
opposite to all Law, Justice, and Reason. And is far from do
ing, That the Right Honourable Court of Parliament, will
severe Animadversion of so scandalous and calumnious Plea's; w
indeed as much as in the Pretender lyes, reflects as far on the Ju
of that Court, as can possibly be done, by bringing ridiculous Cl
to vex the Leiges; As if that High Court could not soon di
what every Person of common sense, cannot but discern; As to w
Lybel and Replyes so full of the darkest mistakes of Law, and L
ers, and so stuft with *Paralogisms* in *Law*, and *Solecisms* in *Gram*
He will make no Answer, that being with far more Learn
nor is proportionable, fully made by the Clerks in their Answers
Duplies to the Petition and Replies. And albeit he knows himsel
reachable in the particular; yet your Lordships will, I hope, allow
to expostulat for redress against such Injuries, to Subjects, to L
and to our *Sovraignes*; For as to our selves perhaps Record ca
instance so calumnious a Plea. Sometimes the Adversaries gives
Action the name of *Concussion*, another time of *Quod metus causa*;
so

th. I may ſay with *Cato in Saluſt. Jam pridem equidem nos vera rerum ula amiſimus*, If there was Concuſſion? will the Poſſeſſor *ſine cri-* be decerned againſt before a Concuſſion be proved? And can a cuſſion be proved Judicially, without ſo much as citing a Con-r? For they are not yet ſo ridiculous, as to alleage that the now ks were the Concuſſors: Well, if they miſs of a Concuſſion, it be found reduceable *ex capite metus*; But where is the Violence? o much as one threat alleaged to dimit the Office, no, not a l Execution, nor poſſibility of one to force an Homologation: And oth Dimiſſion, Diſpoſition, and Homologation, ſo voluntarly ted without a ſhaddow of Coaction, muſt be reduced *ex capite* : Is not this unparellel'd calumnie, and ridiculing of our Laws, llerablie! But to make up all, Concuſſion, Violence, Robbery; all the **Black Names** is ſum'd up at laſt, by the Replyer, in **It was done by the Letter of a King**, who becauſe he writes s Senate, to Reduce Enormities and illegal Invaſions of Rights, to, according to the Standing Laws, and that by no *extrajudicial* , nor new *erected Court*, nor *extraordinary Commiſſion*, but by the *er Supreme*, and *beſt loved Court of the Nation*: So far from ſhewing er at the Perſons; that in Rectifying the wrong, he gratifies them Reward, rather than Puniſhment; And ſo far from Threats, that ler Expreſſions could not be Adapted, to excuſe the faults of a d, than was uſed by this *Father of the Country* to theſe tranſgreſſors is Law; But this is treated with no more Civil Name, then *Con-*; And in plain Terms a KING! for ſo *Juſt*, ſo *Clement*, ſo *moderate*, *neficial execution of the Juſt Laws*, is branded with the expreſs racter of a **Concuſſor**, a **Robber**, a **Tyrant**! which touching dely on the *lawful exerciſe of the Soveraign Power*, as not only to me a late *Glorious King*, Uncle to both Their MAJESTIES; with a moſt Criminal Inſolence, to **Pannel Kingſhip**! And ttacque the *Monarchie* in its moſt Eminent Rights. Therefore nclude, The *Viſcount of Tarbat*, Does Humbly Intreat Your Lord-

ſhips,

ſhips, to conſider this Invaſion of the *Royal Honour* and *Power*, as
ter worthie of Your Notice; And Deſires that no Progreſs b
in this matter, which wholly depends on the *Kings Soveraign*
And the Execution thereof until His *Majeſty* be informed of t
ture of this purſute, wherein His Honour, and the *Right of th*
is ſo deeply concerned. And Humbly Offers, and Propoſes as
ject, a Peer, and a Member of Parliament, That His *Majeſ*
vocate, Solicitor, or their *Subſtitutes*, may be conſulted in ſo
Point; And that inquiry be made for the Authors of this ſcan
Criminal Lybell; And further, Humbly Offers to Yours Lo
Conſideration, if the Cauſe do not require, that the Auth
Spreaders be ſecured, untill His *Majeſties* Pleaſure be known he